

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

The Department of Transportation of the State of
Illinois, for and in behalf of the People of the State
of Illinois,

Petitioner,

vs.

T05-0044

BNSF Railway Company, f/k/a Burlington Northern
Santa Fe Railway Company,
Respondent.

Petition for an Order authorizing Petitioner to acquire
through eminent domain from Respondent, BNSF, a
permanent easement in Parcel No. 2190015PE and a
temporary easement in Parcel No. 2190015TE
located DeKalb County, Illinois.

ORDER

By the Commission:

On August 9, 2005, the Department of Transportation of the State of Illinois ("Petitioner"), filed the above referenced Petition with the Illinois Commerce Commission ("Commission") naming as Respondent BNSF Railway Company, f/k/a Burlington Northern and Santa Fe Railway Company ("Respondent") to approve the taking of certain property in DeKalb County, Illinois, by exercising the power of eminent domain (Parcel Nos. 2190015PE and 2190015TE).

Pursuant to Notice as required by law and by the rules and regulations of the Commission, a hearing was held on September 21, 2005, before a duly authorized Administrative Law Judge of the Commission at the Commission's offices in Springfield, Illinois. Appearances were entered on behalf of Petitioner and by a staff member of the Railroad Section of the Transportation Division of the Commission ("Staff"). At the conclusion of the September 21, 2005, hearing the case was marked "Heard and Taken."

Mr. Brian Mayer, Project Support Engineer, employed by District 2 of the Illinois Department of Transportation, testified that Petitioner seeks a permanent easement to the property depicted on Petitioner's Exhibit No. 1., identified as Parcel No. 2190015PE, consisting of four tracts. Parcel No. 2190015 PE is needed for the construction and maintenance of drainage structures as a part of an improvement of FA Route 573 (U.S. 30), from the western limits to the eastern limits of Hinckley, Illinois. The proposed FA Route 573 (U.S. 30) reconstruction will widen U.S. 30 to three lanes through Hinckley, DeKalb County, Illinois for the purpose of improving the safety and assisting the motoring public.

Mr. Mayer further testified that Petitioner seeks a temporary easement to certain properties also depicted on Petitioner's Exhibit No. 1. Parcel No. 2190015TE consists of nine tracts and is needed by Petitioner for access to said tracts during the construction of the drainage structures in Parcel No. 2190015PE. The temporary easements are sought for three years from the date Petitioner takes possession of Parcel No. 2190015TE or from the date Petitioner takes possession to the completion of construction, whichever is earlier.

The project has been funded for the current fiscal year. The proposed bid letting schedule is such that acquisition of the property will be necessary through eminent domain. Petitioner will be unable to complete the planned improvements within Hinckley, Illinois, in the absence of obtaining the described permanent and temporary easements. Mr. Mayer further testified that the planned construction work will have no impact on the operations of Respondent.

Mr. Mayer also testified that Petitioner had attempted to obtain, by negotiation, the parcels sought in this proceeding from Respondent but an agreement had not been obtained.

The Commission, after a review of the entire record, finds that:

- (1) the Commission has jurisdiction of the subject matter hereof and the parties hereto;
- (2) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (3) Petitioner seeks to acquire a permanent easement in Parcel No. 2190015PE, consisting of four tracts, legally described in Appendix "A" attached hereto, and also attached to the Petition in this docket as Exhibit "A", presently owned of record by Respondent;
- (4) Petitioner seeks to acquire a temporary easement in Parcel No. 2190015TE, consisting of nine tracts, legally described in Appendix "B" attached hereto and also attached to the Petition in this docket as Exhibit "B". Petitioner seeks a temporary easement in said property for a period of three years from the date Petitioner obtains possession of said property or until completion of construction, whichever is earlier;
- (5) Petitioner seeks to acquire the property interests described above to better serve the traveling public and to increase public safety. in DeKalb County;

- (6) Petitioner presented evidence of the ownership by Respondent of the subject property;
- (7) the evidence shows that the proposed construction can be carried out without interfering with Respondent's rail carrier operations;
- (8) the desired property interests are reasonably necessary for the proposed project and the Petition should be granted.

IT IS THEREFORE ORDERED that the approval of the Commission be, and it is hereby, granted to the Department of Transportation of the State of Illinois, for the purpose of exercising its power of eminent domain for the purpose of acquiring a permanent easement to Parcel No. 2190015 PE, consisting of four tracts and legally described in Appendix A attached hereto.

IT IS FURTHER ORDERED that the approval of the Commission be, and it is hereby, granted to the Department of Transportation of the State of Illinois, for the purpose of exercising its power of eminent domain for the purpose of acquiring temporary easements to Parcel No. 2190015TE, consisting of nine tracts and legally described in Appendix B attached hereto, and further, that said temporary easements shall be for a period of three years from the date Petitioner takes possession of said property or from the date Petitioner takes possession of said property until the completion of construction, whichever is earlier.

IT IS FURTHER ORDERED that subject to sections 18c-2201 and 18c-2206 of the Law, this is a final decision, subject to the Administrative Review Law.

By Order of the Commission this 19th day of October, 2005.

Martin P. Colon
#2

Chairman

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

P-30/LAL-05100/588R

FA Route 573 (US 30)
Section 116RS-7
Parcel 015PE

PERMANENT
EASEMENT

BNSF Railway Company
f/k/a The Burlington
Northern and Santa Fe
Railway Company,
a Delaware Corporation

A part of the right-of-way of the Burlington Northern Santa Fe Railway Company in the West Half of the Southwest Quarter of Section 14 and in the Southeast Quarter of Section 15, all in Township 38 North, Range 5 East of the Third Principal Meridian, DeKalb County, State of Illinois, described as follows:

TRACT ONE

Commencing at the southeast corner of Block 2 as designated upon the plat of Wagner and Miller's Second Addition to Hinckley, the Plat of said Addition is recorded in Book B of Plats at Page 74 in the Recorder's Office of DeKalb County; thence South 73 degrees 29 minutes 52 seconds West (Bearings assumed for description purposes only), 391.98 feet on the southerly line of said Block 2, to the Point of Beginning.

From the Point of Beginning thence South 0 degrees 00 minutes 00 seconds West, 104.30 feet to the southerly right-of-way line of the Burlington Northern Santa Fe Railway; thence South 73 degrees 29 minutes 52 seconds West, 20.86 feet on said southerly right-of-way line; thence North 0 degrees 00 minutes 00 seconds East, 104.30 feet, to the southerly line of said Block 2; thence North 73 degrees 29 minutes 52 seconds East, 20.86 feet on said southerly line, to the Point of Beginning, containing 0.048 acre, more or less.

TRACT TWO

Beginning at the northwest corner of Block 1 as designated upon the Plat of Oak Knoll Addition to Hinckley, the plat of said Addition is recorded in Book D of Plats at Page 37 in the Recorder's Office of DeKalb County; thence westerly 70.00 feet on a curve to the left, having a radius of 2,814.79 feet, a central angle of 1 degrees 25 minutes 30 seconds and the long chord of said curve bears South 87 degrees 52 minutes 57 seconds West, (Bearings assumed for description purposes only), 70.00 feet to the easterly line of Outlot A in said Oak Knoll Addition; thence North 1 degrees 43 minutes 38 seconds West, 44.84 feet to the southerly line of premises conveyed to Karen J. Sparks from The Burlington Northern and Santa Fe Railway Company by Quit Claim Deed recorded January 14, 2004 as Document No. 2004000878 in said Recorder's Office; thence North 83 degrees 29 minutes 28 seconds East, 34.31 feet on said southerly line, to the easterly line of said premises so conveyed; thence North 1 degrees 24 minutes 53 seconds West, 39.14 feet on said easterly line, to the southerly right-of-way line of a public highway designated FA Route 573 (US 30); thence North 88 degrees 29 minutes 14 seconds East, 313.64 feet on said southerly right-of-way line; thence South 86 degrees 01 minutes 51 seconds East, 70.13 feet on said southerly right-of-way line; thence South 86

degrees 42 minutes 58 seconds West, 95.77 feet; thence South 88 degrees 25 minutes 45 seconds West, 230.00 feet; thence South 74 degrees 23 minutes 37 seconds West, 420.62 feet; thence South 0 degrees 03 minutes 40 seconds East, 71.34 feet, to the Point of Beginning, containing 0.179 acre, more or less.

TRACT THREE

Commencing at the northwest corner of Lot 2 as designated upon the plat of Alice Large Subdivision, the Plat of said Subdivision is recorded in Book L of Plats at Page 16 in the Recorder's Office of DeKalb County; thence South 1 degrees 31 minutes 43 seconds East (Bearings assumed for description purposes only), 223.04 feet on the west line of said subdivision, to the northerly right-of-way line of the Burlington Northern Santa Fe Railway; thence North 86 degrees 01 minutes 47 seconds West, 20.17 feet on said northerly right-of-way line, to the Point of Beginning.

From the Point of Beginning thence South 2 degrees 01 minutes 43 seconds East, 38.72 feet; thence South 0 degrees 00 minutes 00 seconds East, 61.64 feet to the southerly right-of-way line of said Burlington Northern Santa Fe Railway; thence North 86 degrees 01 minutes 47 seconds West, 20.05 feet on said southerly right-of-way line; thence North 0 degrees 00 minutes 00 seconds West, 59.90 feet; thence North 2 degrees 01 minutes 43 seconds West, 40.47 feet, to said northerly right-of-way line; thence South 86 degrees 01 minutes 47 seconds East, 20.11 feet on said northerly right-of-way line, to the Point of Beginning, containing 0.046 acre, more or less.

TRACT FOUR

Commencing at the southwest corner of Lot 6 in Block 3 as designated upon the plat of Wagner and Miller's Second Addition to Hinckley, the Plat of said Addition is recorded in Book B of Plats at Page 74 in the Recorder's Office of DeKalb County; thence North 73 degrees 29 minutes 52 seconds East (Bearings assumed for description purposes only), 394.58 feet on the southerly line of said Block 3 and the northerly right-of-way line of the Burlington Northern Santa Fe Railway, to the Point of Beginning.

From the Point of Beginning thence North 73 degrees 29 minutes 52 seconds East, 20.87 feet on said northerly right-of-way line; thence South 0 degrees 00 minutes 00 seconds East, 104.30 feet to the southerly right-of-way line of the Burlington Northern Santa Fe Railway; thence South 73 degrees 29 minutes 52 seconds West, 20.87 feet on said southerly right-of-way line; thence North 0 degrees 00 minutes 00 seconds West, 104.30 feet, to the Point of Beginning, containing 0.048 acre, more or less.

The above description affects Tax Code Nos. 15-14-501-001, 15-14-501-002 and 15-14-501-003.

P-23/LAL-05101/588R

FA Route 573 (US 30)

Section 116RS-7

DeKalb County

Sta. 814+33 to Sta. 852+08

Job No. R-92-019-00

Parcel 015TE

Owner: Burlington Northern Santa Fe
Railway formerly the Chicago
Burlington and Quincy Railroad
Company

PARCEL DESCRIPTION

Page 1 of 6

A part of the right-of-way of the Burlington Northern Santa Fe Railway Company in the West Half of the Southwest Quarter of Section 14 and in the Southeast Quarter of Section 15, all in Township 38 North; Range 5 East of the Third Principal Meridian, DeKalb County, State of Illinois, described as follows:

TRACT ONE

Commencing at the southeast corner of Block 2 as designated upon the Plat of Wagner and Miller's Second Addition to Hinckley, the Plat of said Addition is recorded in Book B of Plats at Page 74 in the Recorder's Office of DeKalb County; thence South 73 degrees 29 minutes 52 seconds West (Bearings assumed for description purposes only), 412.84 feet on the southerly line of said Block 2, to the Point of Beginning.

From the Point of Beginning thence South 0 degrees 00 minutes 00 seconds West, 104.30 feet to the southerly right-of-way line of the Burlington Northern Santa Fe Railway; thence South 73 degrees 29 minutes 52 seconds West, 10.43 feet on said southerly right-of-way line; thence North 00 degrees 00 minutes 00 seconds East, 104.30 feet to the southerly line of said Block 2; thence North 73 degrees 29 minutes 52 seconds East, 10.43 feet on said southerly line, to the Point of Beginning, containing 0.024 acre, more or less.

TRACT TWO

Commencing at the southeast corner Block 2 designated upon the Plat of Wagner and Miller's Second Addition to Hinckley, the Plat of said Addition is recorded in Book B of Plats at Page 74 in the Recorder's Office of DeKalb County; thence South 73 degrees 29 minutes 52 seconds West (Bearings assumed for description purposes

only), 381.55 feet on the southerly line of said Block 2, to the Point of Beginning.

From the Point of Beginning thence South 0 degrees 00 minutes 00 seconds West, 104.30 feet, to the southerly right-of-way line of the Burlington Northern Santa Fe Railway; thence South 73 degrees 29 minutes 52 seconds West, 10.43 feet on said southerly right-of-way; thence North 0 degrees 00 minutes 00 seconds East, 104.30 feet, to the southerly line of said Block 2; thence North 73 degrees 29 minutes 52 seconds East, 10.43 feet on said southerly line, to the Point of Beginning, containing 0.024 acre, more or less.

TRACT THREE

Commencing at the northeast corner of Block 12 as designated upon the Plat of the subdivision of the Unnumbered Block north of Depot in the Village of Hinckley, the Plat of said Unnumbered Block is recorded in Book B of Plats at Page 22 in the Recorder's Office of DeKalb County; thence westerly on the southerly line of said Block 12, 69.64 feet on a curve to the left, having a radius of 2,914.79 feet, a central angle of 1 degrees 22 minutes 08 seconds and the long chord of said curve bears South 79 degrees 11 minutes 58 seconds West, 69.64 feet to the westerly line of premises conveyed to Karen J. Sparks from the Burlington Northern and Santa Fe Railway Company by Quit Deed recorded January 14, 2004 as Document No. 2004000878 in said Recorder's Office, and to the Point of Beginning.

From the Point of Beginning thence South 8 degrees 52 minutes 36 seconds East, 38.48 feet on the westerly line of said premises so conveyed; thence North 62 degrees 57 minutes 36 seconds West, 37.61 feet; thence North 53 degrees 03 minutes 02 seconds East, 31.54 feet; thence North 1 degrees 38 minutes 13 seconds West, 1.48 feet, to the southerly line of said Block 12; thence easterly on said southerly line 2.44 feet on a curve to the right, having a radius of 2,914.79 feet, a central angle of 0 degrees 02 minutes 53 seconds and the long chord of said curve bears North 78 degrees 29 minutes 24 seconds East, 2.44 feet, to a point of Beginning, containing 0.013 acre, more or less.

TRACT FOUR

Commencing at the northwest corner of Block 1 as designated upon the Plat of Oak Knoll Addition to Hinckley, the Plat of said Addition is recorded in Book D of Plats at Page 37 in the Recorder's Office of DeKalb County; thence westerly 70.00 feet on a curve to the left, having a radius of 2,814.79 feet, a central angle of 1 degrees 25 minutes 30 seconds and the long chord of said curve bears South 87 degrees 52 minutes 57 seconds West, (Bearings assumed for description purposes only), 70.00 feet to the easterly line of Outlot A in said Oak Knoll Addition, and to the Point of Beginning.

From the Point of Beginning thence South 1 degree 43 minutes 38 seconds East, 13.11 feet on said easterly line; thence South 88 degrees 16 minutes 21 seconds West, 10.12 feet; thence North 11 degrees 15 minutes 14 seconds West, 30.08 feet; thence South 84 degrees 36 minutes 54 seconds West, 293.63 feet; thence South 66 degrees 37 minutes 40 seconds West, 53.85 feet; thence North 62 degrees 57 minutes 36 seconds West, 44.91 feet to the southerly line of premises conveyed to Karen J. Sparks from The Burlington Northern and Santa Fe Railway Company by Quit Claim Deed recorded January 14, 2004 as Document No. 2004000878 in said Recorder's Office; thence easterly on the southerly line of said premises so conveyed 118.51 feet on a curve to the right, having a radius of 5,757.58 feet, a central angle of 0 degrees 59 minutes 42 seconds and the long chord of said curve bears North 82 degrees 03 minutes 28 seconds East, 118.51 feet; thence North 7 degrees 21 minutes 10 seconds West, 9.00 feet on said southerly line; thence North 83 degrees 29 minutes 28 seconds East, 281.61 feet on said southerly line; thence South 1 degrees 43 minutes 38 seconds East, 44.84 feet, to the Point of Beginning, containing 0.208 acre, more or less.

TRACT FIVE

Beginning at the northwest corner of Block 1 as designated upon the Plat of Oak Knoll Addition to Hinckley, the Plat of said Addition is recorded in Book D of Plats at Page 37 in the Recorder's Office of DeKalb County; thence North 0 degrees 03 minutes 40 seconds West (Bearings assumed for description purposes only), 71.34 feet; thence North 74 degrees 23 minutes 37 seconds East, 20.62 feet; thence North 88 degrees 25 minutes 45 seconds East, 230.00 feet; thence North 86 degrees 42 minutes 58 seconds East, 95.77 feet to the southerly right-of-way line of a public highway designated FA Route 573 (US 30); thence South 86 degrees 01 minutes 51 seconds East, 128.85 feet on said southerly right-of-way line, thence South 86 degrees 01 minutes 47 seconds East, 77.70 feet on said southerly right-of-way line; thence North 89 degrees 44 minutes 45 seconds West, 179.04 feet; thence South 85 degrees 11 minutes 24 seconds West, 152.61 feet; thence South 88 degrees 28 minutes 01 seconds West, 207.15 feet; thence South 2 degrees 21 minutes 31 seconds West, 70.18 feet; thence South 88 degrees 16 minutes 21 seconds West, 9.88 feet to the west line of said Block 1; thence North 1 degrees 43 minutes 38 seconds West, 13.58 feet on said west line, to the Point of Beginning, containing 0.201 acre, more or less.

TRACT SIX

Commencing at the northwest corner of Lot 2 as designated upon the plat of Alice Large Subdivision, the Plat of said Subdivision is recorded in Book L of Plats at Page 16 in the Recorder's Office of DeKalb County; thence South 1 degrees 31 minutes 43 seconds East (Bearings assumed for description purposes only), 223.04 feet on the west line of said subdivision, to the northerly right-of-way line of the

Burlington Northern Santa Fe Railway; thence North 86 degrees 01 minutes 47 seconds West, 460.39 feet on said northerly right-of-way line, to the Point of Beginning.

From the Point of Beginning thence South 2 degrees 01 minutes 43 seconds East, 40.47 feet; thence South 0 degrees 00 minutes 00 seconds East, 59.90 feet to the southerly right-of-way line of said Burlington Northern Santa Fe Railway; thence North 86 degrees 01 minutes 47 seconds West, 9.65 feet on said southerly right-of-way line; thence North 0 degrees 21 minutes 18 seconds West, 58.85 feet; thence North 2 degrees 01 minutes 43 seconds West, 41.54 feet, to said northerly right-of-way line; thence South 86 degrees 01 minutes 47 seconds East, 10.06 feet on said northerly right-of-way line, to the Point of Beginning, containing 0.023 acre, more or less.

TRACT SEVEN

Commencing at the northwest corner of Lot 2 as designated upon the plat of Alice Large Subdivision, the Plat of said Subdivision is recorded in Book L of Plats at Page 16 in the Recorder's Office of DeKalb County; thence South 1 degrees 31 minutes 43 seconds East (Bearings assumed for description purposes only), 223.04 feet on the west line of said subdivision, to the northerly right-of-way line of the Burlington Northern Santa Fe Railway; thence North 86 degrees 01 minutes 47 seconds West, 420.17 feet on said northerly right-of-way line, to the Point of Beginning.

From the Point of Beginning thence South 2 degrees 01 minutes 43 seconds East, 37.67 feet; thence South 0 degrees 00 minutes 00 seconds East, 62.69 feet to the southerly right-of-way line of said Burlington Northern Santa Fe Railway; thence North 86 degrees 01 minutes 47 seconds West, 10.02 feet on said southerly right-of-way line; thence North 0 degrees 00 minutes 00 seconds West, 61.64 feet; thence North 2 degrees 01 minutes 43 seconds West, 38.72 feet, to said northerly right-of-way line; thence South 86 degrees 01 minutes 47 seconds East, 10.06 feet on said northerly right-of-way line, to the Point of Beginning, containing 0.023 acre, more or less.

TRACT EIGHT

Commencing at the southwest corner of Lot 6 in Block 3 as designated upon the Plat of Wagner and Miller's Second Addition to Hinckley, the Plat of said Addition is recorded in Book B of Plats at Page 74 in the Recorder's Office of DeKalb County; thence North 73 degrees 29 minutes 52 seconds East (Bearings assumed for description purposes only), 384.16 feet on the southerly line of said Block 3 and the northerly right-of-way line of Burlington Northern Santa Fe Railway, to the Point of Beginning.

From the Point of Beginning thence North 73 degrees 29 minutes 52 seconds East, 10.42 feet on said northerly right-of-way line; thence South 0 degrees 00 minutes 00 seconds East, 104.30 feet to the southerly right-of-way line of said Burlington Northern Santa Fe Railway; thence South 73 degrees 29 minutes 52 seconds West, 10.43 feet on said southerly right-of-way line; thence North 00 degrees 00 minutes 00 seconds West, 104.30 feet, to the Point of Beginning, containing 0.024 acre, more or less.

TRACT NINE

Commencing at the southwest corner Lot 6 in Block 3 as designated upon the Plat of Wagner and Miller's Second Addition to Hinckley, the Plat of said Addition is recorded in Book B of Plats at Page 74 in the Recorder's Office of DeKalb County; thence North 73 degrees 29 minutes 52 seconds East (Bearings assumed for description purposes only), 415.45 feet on the southerly line of said Block 3 and the northerly right-of-way line of the Burlington Northern Santa Fe Railway, to the Point of Beginning.

From the Point of Beginning thence North 73 degrees 29 minutes 52 seconds East, 10.43 feet on said northerly right-of-way line; thence South 0 degrees 00 minutes 00 seconds East, 104.30 feet, to the southerly right-of-way line of said Burlington Northern Santa Fe Railway; thence South 73 degrees 29 minutes 52 seconds West, 10.43 feet on said southerly right-of-way; thence North 0 degrees 00 minutes 00 seconds West, 104.30 feet, to the Point of Beginning, containing 0.024 acre, more or less.

The said Real Estate being also shown by the plat hereto attached and made a part hereof.

It is not the intent of this instrument to encumber any building or structure lying within the easement area.